

Alexander Mill, William Ross and David But-  
ter, the present Baillies of the Burgh of Mon-  
trose, on behalf of themselves and the other Ma-  
gistrates and Councillors of the said Burrough,  
APPELLANTS.

Robert Reid, James Coutts, George Morrison,  
James Smith, John Adam, John Hutchin,  
Alexander Strachan, Robert Ramsay, Robert  
Reid and David Buchannan, RESPONDENTS.

## The Appellant's CASE.

**T**HAT the Day of the annual Election of a Provost, Magistrates and Town-Council of the said Burrough being on *Wednesday* before *Michaelmas* Day, an Election was accordingly made upon that Day 1722, whereby *James Scot* of *Logie* was regularly elected Provost of the said Burrough, as were also the Appellants Baillies and Councillours.

That upon such Election the said Provost and the Appellants entred into the Exercise of their respective Offices, and so continued for some time without any Disturbance.

That the Respondents brought their Action of Reduction and Declarator, in order to have the Act of Election of the said *James Scot* and the Appellants declared void and null, upon pretence that the said *James Scot* had upon the Day of Election illegally imprisoned four of the Electors, contrary to the Freedom of Elections, and that no Election could be unless at a Meeting of the Majority of the Electors; but tho' the Number of Electors in this Burrough be nineteen, there were present at the Election of the said *James Scot* and the Appellants only nine; so that the said Election was void.

That the Respondents not only prayed the Election of the Appellants to be set aside, and that the said *James Scot* should be declared incapable of holding any Office in the said Burrough in Time coming, but likewise insisted that the Respondents might be declared to be the only legal Magistrates and Councillors of the said Burrough.

That in the Summons or Action brought, there is no Reason of Reduction insisted upon against any of the Appellants; but what the Respondents aimed at was to have the Act of the Election declared void. It was therefore insisted upon by the said *James Scot* and the Appellants, that it was impossible to take any Steps to avoid the Act of Election of any of the Appellants, but what must at the same Time set aside the Election of the said *James Scot*, for there were no particular Disabilities charged against any of the Appellants, and the Election of the said Provost and the Appellants was made at one and the same time: But that Mr. *Scot* the Provost being a Member of Parliament there could be no Proceedings against him, and consequently every thing ought to be stayed as against the Appellants, till the Provost who was principally concerned could be obliged to answer.

This



22 Dec. 1722. This Matter being heard before the Lord Ordinary, his Lordship upon the 22<sup>d</sup> of December last was pleased to sist Process against the said Mr. Scot during his Privilege of Parliament, but he sustained Process against the Appellants, and before Answer allowed the Respondents to prove their Libel, that there was not a Quorum at the Election of the Appellant Mill as Bailie, and that there was four of the Town Council in Prison at the Time of the Election, and by a posterior Interloquitor of the 27<sup>th</sup> of the same Month, his Lordship was pleased to sustain Process against all the Defendants and allowed a Proof to be led against them except Mr. Scot.

That upon a Petition of the Appellants to all the Lords against the said Interloquitors, their Lordships were pleased to order the same to be heard in their own Presence; and it was then insisted upon by the Appellants, that the principal if not the only Reason made use of to set aside the Election, was a pretended illegal Act of the said Mr. Scot's in imprisoning some of the Electors to which it was not alledged the Appellants were accessary, and since it was admitted they could not proceed against the said Mr. Scot, it could not but be considered as a great Hardship to oblige the Appellants to enter into a Justification of that Action, when at the same time neither the Appellants nor the Respondents could compell the said Mr. Scot to answer thereto.

It was likewise insisted upon for the Appellants, that supposing Mr. Scot had been guilty of an illegal Act, whatever Influence that might have upon the Election of Mr. Scot himself, it could never affect the Election of the Appellants, who were not so much as charged to have had the least Concern in, or Accession to, such illegal Act.

That the said Lords, however, were pleased upon the 19<sup>th</sup> of January last to pronounce the two following Interloquitors:

19 Jan. 1722<sup>1</sup>. The Lords having advised the Debate, find that Mr. Scot's Privilege cannot stop the Pursuers from insisting on that Reason of Reduction of the Election of the other Members, that Mr. Scot unwarrantably imprisoned some of the Members of Council during the Election; and

Found it relevant to annull the Election of the other Members, that Mr. Scot unwarrantably imprisoned some of the Members of Council during the Time of the Election.

Against these interloquitory Sentences the Appellants have brought their Petition and Appeal, and pray the same may be reversed for these Reasons:

- Reason I.* It seems very unreasonable to oblige the Appellants to justify an Act of Mr. Scot's, when at the same time there can be no Proceeding against Mr. Scot himself. He may have very good Reasons to alledge to support what he did, of these the Appellants may be intirely ignorant; or, supposing they should be acquainted with them, they may not be furnished with proper Vouchers for justifying them; and therefore the Appellants should not be obliged to plead to this Suit, till once Mr. Scot can be regularly proceeded against. Especially
- II. Since it is not so much as charged by the Respondents, that the Appellants were concerned with Mr. Scot, or accessary to the illegal Act said to be committed by him, it is then at least a very new Method of proceeding to compell the Appellants to justify this Act at the Hazard of losing their Right, when not only the principal, but the only Actor cannot be proceeded against: This will be attended with many bad Consequences. For
- III. Suppose that the Appellants being ignorant of the true Circumstance of the Case, and not having the proper Vouchers to justify the Fact, Judgment should thereupon be given against them, and they thereby deprived of their Rights as Magistrates,



Magistrates, upon this Fact only; when at the same time Mr. *Scot*, when he comes to Plead, may give sufficient Reasons for to justify his Conduct, and thereupon be acquitted, whereby the Appellants would meet with an apparent Injustice; and therefore the full Case ought to be tried at once.

IV. That supposing the Fact were proved against Mr. *Scot*, yet it seems highly unreasonable that any Act of his, to which the Appellants were not at all accessory, should be made use of to set aside the Election of the Appellants. Every Man ought to suffer for his own Faults; and therefore it is hardly to be conceived how Mr. *Scot*'s Act can affect the Appellants.

V. The Case is the same as if Mr. *Scot* had not been present at the Election, and the other Electors had proceeded to make a Choice without him; that Election no doubt would have been good: How then can the Presence of Mr. *Scot*, against whom there may be an Objection upon a Fact committed by him only, be made use of as a Handle to set aside the Act of Election, which of it self can subsist without the Intervention or Presence of Mr. *Scot*.

Objection.

That it is sufficient for the Respondents, in order to avoid the Election, to insist that some of the Members of the Council and the Electors were unwarrantably detained, nor was it of any Moment by whom, or by whose Direction, they were so detained.

Answer. 1.

Were this Reason sufficient, it would be in the Power of any Person, though not an Elector, by unwarrantably detaining any one of the Electors, to set aside every Election of any Magistracy whatever, and introduce the greatest Confusion imaginable.

II.

This is the more unreasonable in this Case, because neither by the Law, nor the Constitution and Practice of this Borough, are any particular Number of Electors necessary to be present when an Election is made; the Day for the Election is fixed, and the Persons elected by the Majority of the Electors then present, are, and always have been, considered as duly and regularly elected; and the Appellants were accordingly, without any Accession to any unwarrantable Act upon their Part, regularly elected by the Majority of Electors present, on the proper Day, and in the proper Place appointed for that purpose; and therefore hope they shall be quieted in the Enjoyment of their Offices, and that no Act of any other Person, to which they had no Accession, shall be made use of as a Handle to avoid their Right.

DUN. FORBES.  
WILL. HAMILTON.

DEPOSED  
CY 2 F.

on 14th Dec 1853



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DUN. FORBES.  
WILL. HAMILTON.



P E L L A N T S.

ROBERT REID and others, RESPON-  
DENTS.

# The Appellants CASE.

To be heard on Thursday the 23<sup>d</sup> Day of  
May, 1723.



DUN. FORBES.  
WILL. HAMILTON.